

CHAPTER 309.

[Published May 5, 1863.]

AN ACT to incorporate the Milwaukee, Winnebago and St. Paul railroad company.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows :

Corporators.

SECTION 1. That Nelson Webster, J. S. Davis, Chester Steele, John Dahlman, Robert Haney, A. C. May, James Bonnell and Frederick Vogel, of Milwaukee, and B. F. Moore, S. B. Amory and Mason C. Darling, of Fond du Lac, and Philetus Sawyer, R. M. Hutchinson and S. B. Page, of Winnebago, and William Gomar and Henry Miles, of Waupacca, and George W. Cate and John H. Morgan, of Portage, and H. Clay Williams, of Eau Claire, and William Wilson and William Carson, of Dunn county, and Charles B. Cox, of Pierce county, and such other persons as shall become stockholders in (*in*) the corporation hereby created, in accordance with the provisions of this act, shall be and they are hereby created a body corporate and politic, by the name and style of the "Milwaukee, Winnebago and St. Paul railroad company," and by that names hall have perpetual succession, be competent to contract and be contracted with, sue and be sued, implead and be impleaded, answer and be answered, defend and be defended, in any court whatever; but shall never set up the defense of usury in any court whatever. The said corporation may make, have and use a common seal, which it may alter or renew at pleasure; it shall be capable of acquiring by deed, lease or other conveyance, a fee simple or any less estate in lands, tenements or easements in the same, and of conveying any such estate or interest by deed, lease or other conveyance, or of holding such estate or interest, or any other estate necessary for the legitimate use of said company, either real, personal or mixed; and shall have and enjoy all the privileges, franchises and immunities incident to a corporation, and may do and perform all and singular the acts and matters which to any corporation it shall lawfully appertain to do and perform for the well being of said corporation.

Name and powers.

SECTION 2. The capital stock of said corporation shall be five million dollars, and shall be divided into fifty thousand shares of one hundred dollars each, and shall be subdivided [subscribed] in the manner hereinafter provided. Capital stock.

SECTION 3. The said Nelson Webster, J. S. Davis, Chester Steele, John Dahlman, Robert Haney, A. C. May, James Bonnell, Frederick Vogel, B. F. Moore, S. B. Amory, Mason C. Darling, Philetus Sawyer, R. M. Hutchinson, S. B. Page, William Gomar, Henry Miles, George W. Cate, John H. Morgan, H. Clay Williams, William Wilson, William Carson and Charles B. Cox, are hereby appointed commissioners to receive subscriptions to the capital stock of said company, a majority of whom shall constitute a quorum, and shall have authority and power, and are hereby authorized and empowered, to do any act or thing which the commissioners, by virtue of this act, may do or perform. The said commissioners shall give notice by publication [publication] for three successive weeks, in some newspaper printed in the city and county of Milwaukee, of the time and place when and where they will meet to receive subscriptions to the capital stock of said corporation; and at such meeting, shall prescribe rules as to the manner in which subscriptions to the capital stock of said company shall be made, the amount to be paid upon each share, not less than five dollars, and the time and place of payment, which rules shall be entered at length on the books of subscription. The books of subscription shall be kept open until the whole number of shares shall be subscribed, when they shall be closed, and no more subscriptions be received by the commissioners. Commissioners to receive subscriptions.

Notice of meeting to receive subscriptions.

Rules relating to subscription

When books to be closed.

SECTION 4. Whenever the whole number of shares of the capital stock shall be subscribed in conformity with the rules prescribed by the commissioners, and the amount prescribed by such rules paid upon each share so subscribed, not less than five dollars, the commissioners shall give notice to the stockholders, by publication for two or more successive weeks, in such newspaper printed in Milwaukee as they shall determine, to meet at a time and place to be specified in such notice, to elect fifteen directors of said corporation, who shall hold their offices until other directors are elected in pursuance of the by-laws of said corporation. First election of directors.

Survey and location of road.

SECTION 5. The said company shall have power and authority, and they are hereby authorized and empowered, to survey, locate, construct, complete, alter, change the location of, reconstruct, maintain and operate a railroad, with one or more tracks or lines of rails, on such route and with such alignment and graduation as said company shall think proper, from such point as the directors shall determine in the city of Milwaukee, or on the track of the Milwaukee and La Crosse railroad, at or east of the village of Schlessingerville, by the shortest and most practicable route to the cities of West Bend, [in] Washington county, Fond du Lac and Oshkosh, and from thence by any route to the Mississippi river, north of the city of La Crosse, in this state; and the said company shall have authority and power to take, transport and carry persons and property upon said railroad, by the power and force of steam, of animals, or of any mechanical or other power, or of any combination of them, and to make, construct and put in operation all such turnouts, side tracks and connecting tracks as they [they] shall think will promote the interests of the company; to erect and construct all depots, station-houses, warehouses, car-houses and shops, engine-houses and shops, machine-shops and other fixtures useful for the accommodation of said road, and of those using it; to manufacture or purchase all necessary engines, tenders, cars or other conveyances [conveniences] for running said road; and said company shall have power to connect its railroad with any other railroad in the state, and to operate the same in connection with such other railroad.

Transportation of passengers and freight.

Turnouts, &c.

Depots, &c.

Engines, &c.

Connections.

Board of directors.

SECTION 6. All the affairs of said company shall be managed by a board of five directors, who shall be stockholders, and who are hereby invested with all the powers of the corporation. They shall be chosen annually by ballot, by the stockholders, at the annual meeting of the company, which shall be held on such notice and at such time as shall be prescribed by the by-laws, and at such place as shall be prescribed by the board of directors, and stated in such notice. At all meetings of the stockholders, every stockholder shall be entitled to one vote for each share of stock held by him or her, and may vote in person or by proxy duly authorized; and no

business shall be transacted at any meeting of the stockholders, unless a majority of the stock is represented. In all elections of directors, those stockholders equal to the number to be elected, having the greatest number of votes, shall be deemed and declared duly elected. The election shall be constructed [conducted] in such manner as shall be prescribed by the by-laws of the company; and if, from any cause, an election of directors shall not be had at the time when by the provisions of this act or of the by-laws it should be had, the same may be held at any other time on notice to be given as aforesaid; and until such election be had, the directors of the preceding year shall continue to act, and the corporation hereby created shall not forfeit or lose any of its privileges, franchise or immunities by reason of the irregularity or want of such election, nor by reason of any abandonment or non-user of such privileges, franchises or immunities, for a less period than ten consecutive years. The board of directors may at any time increase or diminish the number of directors to be elected at the next annual meeting of stockholders, and the number to be elected shall be specified in the notice of election, but shall never be less than five nor more than eleven.

Failure to elect, not a loss of franchises.

Number of directors.

SECTION 7. A majority of the board of directors shall constitute a quorum for the transaction of any business. They shall meet at such times and places, and be convened in such manner, as they shall decide upon. They shall elect one of their own number to be president, and one to be vice-president. The president shall, when present, preside at all meetings of the board and of the stockholders, and when absent, the vice-president shall discharge the duties of president, and when both are absent, the directors may appoint a president *pro tem*. The board of directors shall have power to appoint an executive committee and prescribe its powers and duties, to appoint a secretary, treasurer, and such engineers, superintendents, agents and other officers as they may deem necessary, and remove them at pleasure, prescribe their duties and compensation, and may demand adequate security for the discharge of their respective duties and trusts. The directors shall have power to fill any vacancy which may occur in their board. The directors shall

Quorum, and meetings.

President and vice-president.

Executive committee and other officers.

Vacancies.

Certificates of stock.

issue a certificate or certificates to the stockholders for the number of shares held by them, respectively, signed by the president and secretary, which shall be transferable in such manner and at such place or places as shall be prescribed by the by-laws, and for the purpose of such transfer, they may establish transfer agencies out of this state. The directors shall have power to prescribe a tariff of prices for the transportation [transportation] of freight and passengers, and to alter or change the same, or, in their discretion, to empower the superintendent or other agents to prescribe or alter such tariff. The directors shall have authority and power, and they are hereby authorized and empowered, to make such covenants, contracts and agreements with any person or persons, copartnership or corporation whatsoever, as (to) the construction of their railroad or its management and the convenience and interests of the company and the conduct of its affairs may, in their judgment, require; and also to make any contract or agreement which they shall think proper, with any person or persons, company or corporation, leasing to such person or persons, company or corporation, perpetually or for a limited time, the whole or any part of the railroad to be constructed or owned by this company, together with the rolling stock, machinery, buildings, tenements or fixtures, and all other property, real, personal or mixed, of this company, and all the franchises, rights, privileges and immunities of this company, and reserving or receiving rents therefor, or to sell the same; and also perpetually or for a limited time to lease or to purchase from any other railroad company the whole or any part of said railroad owned by such company, together with its estate, real, personal or mixed, and its franchises, rights, privileges and immunities. The directors shall also have power and authority to make, prescribe and establish such by-laws, rules, orders and regulations, not in conflict with or repugnant to the constitution or laws of this state or of the United States, as they shall think best for the well ordering of the affairs of said company, and, in general, to superintend and direct all other operations, receipts, disbursements and all of the affairs and proceedings of said company.

SECTION 8. At each annual meeting of the stockholders for the election of directors, the directors of

Tariff of prices.

Contracts for construction and lease of road.

May lease other roads.

By-laws, &c.

Annual exhibit of affairs of company.

the preceding year shall exhibit to the stockholders a complete statement of the affairs and proceedings of the company for such year. Special meetings of the stockholders may be called by order of the board of directors, or by stockholders holding one-fourth [one-fourth] in amount of the capital stock, on like notice as that required for annual meetings, which notice shall specify the objects of the meeting.

SECTION 9. The said company shall have authority and power, and is hereby authorized and empowered in its corporate capacity, to borrow any sum of money from any person or persons, corporation or body politic of any kind, and to make, execute and deliver all necessary writings, notes, bonds, mortgages or other papers and securities, in amount and kind as may be deemed expedient by said corporation, in consideration of any such loan, or in discharge of any liabilities that it may incur in the construction, repair, equipment or running of said road; and the powers of the said corporation, for the purpose aforesaid, and for all purposes necessary to carrying out the objects of said company, namely, the construction of a railroad from and to the points aforesaid, are hereby ratified and confirmed, and the contracts and official acts of said company declared binding in law and equity upon said corporation, and upon all other parties to such contracts. Said company shall also have authority and power, and it is hereby authorized and empowered, in its corporate capacity, to make, execute, issue and deliver its bonds or obligations, from time to time, and at any time, in such an amount that all the bonds of said company outstanding at any one time will not exceed the amount of the capital stock of the said company. The directors of said company are hereby authorized and empowered to prescribe by resolution to be by them adopted, the sum or sums for which each of such bonds shall be issued, the time or times or [and] place or places when and where the principal and interest of the same shall be payable, the person or persons, trustee or corporation to whom the same shall be payable, and whether payable to order or to bearer, or how otherwise negotiable, the rate of interest which such bonds shall bear, not to exceed the legal rate, and the manner and form in which

Special meetings.

May borrow money, and execute notes, bonds, mortgages, &c.

Amount of bonds, interest on same, &c.

Mortgage or deed of trust to secure payment of bonds.

Powers of trustee or mortgagee.

Form of mortgage or deed of trust.

Sinking fund for payment of bonds.

Sale of bonds.

the interest coupons annexed to them shall be executed; and to secure the payment of any or all of such bonds, the said corporation is hereby authorized and empowered, in its corporate capacity, to make, execute and deliver a mortgage or deed of trust upon the whole or any part of its railroad, constructed or authorized to be constructed, and of any or all of its estate, real, personal or mixed, in possession or expectancy, owned and acquired, or to be thereafter owned and acquired by said corporation; and the said company is also hereby authorized and empowered, in and by such mortgage or deed of trust, to confer upon the trustee or mortgagee full and ample powers to enter into and upon, and to take possession of, have, use and enjoy, or to sell and dispose of, the whole or any part of said railroad or estate, together with the functions appertaining to said railroad, and all corporate and other franchises, rights and privileges of said corporation. And the directors of said company are hereby authorized and empowered to prescribe, by resolution to be by them adopted, all matters relating to the form and terms of any such mortgage or deed of trust, and of its execution and delivering, [delivery]; and they are authorized to provide for the periodical payment to such trustee or receiver as they shall appoint, a certain sum, to create a sinking fund with which to pay off or discharge at or before maturity any or all of the bonds by them authorized to be issued, and also to provide the manner in which such trustee or receiver shall pay out or dispose of said sinking fund, and to authorize him to designate by lot, or in any other suitable manner, the bond or bonds to the payment of which such sinking fund, or any part of it, shall be applied; and the said railroad company is hereby fully authorized and empowered, by its treasurer, agents or brokers, or otherwise, at any place to sell, pledge, hypothecate or otherwise dispose of any or all of the aforesaid bonds hereby authorized to be issued, at par or at any price less than par, or for such sum or sums, and on such terms, as to the said company or its treasurer, agents or brokers shall appear most for the interest of said company; and the said company and its directors, officers, agents and brokers are hereby authorized and empowered to have, exercise and enjoy all the rights, privileges and powers hereby conferred upon them

[them,] respectively, any law of this state to the contrary notwithstanding. And any such mortgage or deed of trust, and every discharge or satisfaction thereof, may be recorded in the office of the secretary of state, in a proper book kept for that purpose, and the certificate of such recording, endorsed on such mortgage or deed of trust, shall have the same effect as if such mortgage or deed of trust was recorded in the several counties through which such road may run, and such record in the office of the secretary of state shall be sufficient notice to all persons.

Mortgage or deed of trust to be recorded in office of sec'y of state.

SECTION 10. The said corporation shall have authority and power, and is hereby authorized and empowered, by its officers, engineers and agents, to enter upon any land for the purpose of exploring, surveying, locating or determining the route of its railroad; and when the route of said railroad shall be determined by said company by resolution adopted by the board of directors, the company shall have authority and power, and it is hereby authorized and empowered, by its agents, officers, engineers, contractors, employees and servants, to enter upon, take, possess, occupy and use any land along and including the line of said route, not exceeding one hundred feet in width; and said company shall also have authority and power, and it is hereby authorized and empowered, at any time to enter upon, take, possess, occupy and use any other lands beyond the limits of one hundred feet, which shall by resolution adopted by the board of directors, be declared to be necessary for the use of said company, for the purpose of erecting depot buildings, stopping-stages, station-houses, freight-houses, warehouses, engine-houses, machine-shops, or for buildings or fixtures of any kind, or grounds about any such buildings, houses or fixtures, for the convenient operation of the business of the road, or for the purpose of giving a proper direction to water-courses, or of diverting or changing the channel of water-courses, or for the purpose of removing such substances and things as may endanger, obstruct or interfere with the free use of said road, or for the purpose of making deep cuts or excavations, or for the purpose of depositing earth, gravel or stone, or for the purpose of obtaining earth, gravel or stone or other materials for embankments, structures or superstructures necessary to or for the construction, completion, alteration, mainten-

May enter upon lands, survey and locate road, and use lands on line of same.

Purposes for which other lands may be taken.

ing on the line or route of said railroad; and they shall proceed to examine the premises in each case separately, having first given such notice as they may deem reasonable to the owner, and at least five days' personal notice to such owner, if resident in the county; and whenever it shall appear to said company or its officers that the title of such land is in dispute, or that several parties claim interest therein by tax sales, tax titles, incumbrances, liens or equitable claims, the said commissioners shall, upon request of said company or its officers, give notice to (to) all persons claiming any interest in such lands, whether as owners, incumbrancers or otherwise; (and when the person to be notified has no known residence in this state, within the knowledge of such commissioners, the notice may be published in a newspaper, for such length of time as the commissioners shall deem reasonable;) and after making such examination, the said commissioners, or a majority of them, shall, in each case, separately, make an appraise [appraisment] and award of the value of the land so entered upon, taken, possessed, occupied or used by said company for any of the purposes aforesaid, at the time when the same was so entered upon and taken, and shall deliver one copy of their award, in each case, to the said company, and shall file another in the office of the clerk of the circuit court of the county in which said lands shall lie, with the costs of the award taxed upon each of said copies; and if neither party shall appeal from said award in the manner hereinafter provided, the said circuit court, on motion of the party in whose favor any award shall be made for such value as aforesaid, unless such award shall have previously been paid, shall enter up judgment in conformity with such award. And in case either of said commissioners shall die, resign, or decline to act, the said circuit court or judge shall appoint another commissioner in his stead. The said company, or any party receiving notice from the said commissioners as aforesaid, may, within thirty days after such award shall have been filed with the clerk as aforesaid, appeal from the same to the circuit court of the county in which such award shall be filed, by filing with the clerk of said court a written notice of such appeal. Upon receiving such notice, the said clerk shall enter the appeal as a case

Examination of premises.

If title in dispute, notice to be given to claimants.

Award of damages.

One copy of award to be filed.

Entering up judgment, if neither party appeal.

Vacancies.

Appeal, and trial of case.

upon the docket of the court, setting down the owner or owners and person or persons claiming any interest in said lands, embracing all persons so having received such notice from said commissioners as plaintiffs, and the said company as defendant; and the said court shall proceed to hear and determine such case in the same manner that other cases are heard and determined in such court; and all issues of fact arising therein shall be tried by a jury, unless a jury be expressly waived by both parties. The appellant shall not be entitled to have the case tried at any term of said court, unless he shall have given notice to the appellee or his attorney at least ten days before the first day of the term, that he will demand a trial at such term; but in case the appellee has no known residence in this state, or attorney of record residing therein, no such notice need be given. In all cases the appellee may waive such notice, in which case the same rule for trial shall be applicable to it as to other cases in said court.

Assessment of damages and entering up judgment.

After the hearing of such case, the jury, or if the jury be waived, the court shall assess the value of the lands so entered upon, taken, possessed, occupied and used by said company at the time when the same was entered upon and taken; and after such assessment the court shall proceed to render judgment against said company for the amount of said assessment, in favor of the plaintiff or plaintiffs in such case. If the amount so assessed in favor of the said plaintiff or plaintiffs shall exceed the amount awarded by said commissioners, there [then] judgment shall be rendered against said company for costs; and if it shall not exceed such amount as aforesaid, then judgment shall be rendered in favor of said company for costs, and against the said plaintiff or plaintiffs, and execution may issue accordingly.

Costs.

Change of venue.

Either party shall be entitled to a change of venue for the trial of such cause, on affidavit filed, stating the belief of the person making the affidavit that a fair trial cannot otherwise be had. The change of venue shall be to the nearest county where a fair trial can be had. The judgment of the circuit [court] may be reviewed on appeal or writ of error, as other cases

Review.

When company to pay damages.

Whenever the commissioners shall make an award as aforesaid, and no appeal shall be taken from the case, or whenever, in case of appeal, a final

judgment shall be rendered, it shall be the duty of the company, and not before, to pay to the party entitled to the same, the amount of said award or judgment; and in any case where there shall be any lien, incumbrance, tax sale, tax title, or equitable claim to or upon the land, or any part thereof, which is the subject matter of such award or judgment, or when more than one person shall be entitled to or shall set up any claim to the amount of such award or judgment, or any part of it, or when the person entitled to receive the same shall not have any known residence within this state, the company may deposit the amount of such award, when there is no appeal, with the clerk of the court with whom the award in the case shall have been filed; and in case of an appeal and judgment thereon, the company may deposit the amount of such judgment with the clerk of the circuit court in which such judgment shall have been rendered, and the money so deposited, in either case, shall be paid over by order of the circuit court to the person or persons who shall be adjudged entitled to receive the same. Whenever the amount of such award or judgment shall have been paid, tendered or deposited as aforesaid, an absolute estate in fee simple in such lands shall be and become vested in the said company, and all persons so receiving notice from the said commissioners, and all persons claiming under them, shall be forever canceled [concluded] from questioning such title so acquired by the said company. Said company shall have full power and authority, after entering upon and taking any such lands, to have, hold, possess, occupy, use and enjoy the same for any of the lawful purposes of the said company, from the time of such entry and taking until the proceedings provided for by this act shall have been finally determined, and until said company shall have refused after demand made, to pay the value of the land ascertained as aforesaid; and the company shall not, during such time nor until such refusal, be disturbed in such possession or occupancy, use or enjoyment, by any proceedings either in law or equity.

In case of lien, &c., award may be deposited.

When title shall become vested in company.

Company to enjoy possession of lands until damages are finally determined.

SECTION 12. The said company shall have the right, authority and power, and it is hereby authorized and empowered, to construct its said railroad upon and along, across, under or over any public or private high-

May construct road along side of or across other roads.

way, road, street, plankroad or railroad, if the same shall be necessary; but the said company shall put said highway, road, street, plankroad or railroad in such condition and state of repair as not to impair or interfere with its free and proper use; and also to erect and maintain all necessary bridges for the use of their railroad over any stream of water, a [or] water-course, at such points of crossing the same as said road may be located, with all necessary abutments, piers, arches and foundations.

Penalty for injury to road, &c.

SECTION 13. If any person [shall] wilfully [willfully] or knowingly injure or destroy any part or portion of the railroad so to be constructed, or any works, buildings or machinery attached to or in use upon the same, belonging to said company, or shall wilfully [willfully] and maliciously place any obstruction or thing upon the track of said railroad, such person or persons so offending shall each of them, for every such offense, forfeit and pay to said company three times the amount of damages caused by such offense, which may be recovered in the name of said company in any court having competent jurisdiction. Such person or persons shall also be subject to indictment, and on conviction of any such offense, shall be punished by fine and imprisonment in the state prison, or either, at the discretion of the court; and in case any accident shall occur in consequence of any such obstruction or damage to said road or machinery, whereby the death of any person shall be caused, the person so offending shall, on conviction, be adjudged guilty of murder in the first degree, and punished accordingly, in such manner as shall be prescribed by law for the punishment of murder in the first degree.

Objects not otherwise attainable.

SECTION 14. It is hereby declared that in the judgment of the legislature the objects of this corporation cannot be attained by or under general laws.

Public act, &c.

SECTION 15. This act is hereby declared to be a public act, and its provisions shall be liberally and favorably construed in all the courts of this state; and copies of the same, printed by authority of the legislature, shall be received as evidence thereof in all cases.

SECTION 16. This act shall take effect and be in force from and after its passage.

Approved April 2, 1863.